

Court of Appeals of Kentucky.

COMMONWEALTH of Kentucky ex rel. John B. BRECKINRIDGE, Attorney General of the Commonwealth of Kentucky, Movant,

v.

W. O. WINSTEAD, Individually, and W. O. Winstead, Member of the Board of Education of Crittenden County, Kentucky, Respondent.

COMMONWEALTH of Kentucky ex rel. John B. BRECKINRIDGE, Attorney General of the Commonwealth of Kentucky, Movant,

v.

Beannie MANLEY, Individually, and Bennie Manley, Member of the Board of Education of Crittenden County, Kentucky, Respondent.

COMMONWEALTH of Kentucky ex rel. John B. BRECKINRIDGE, Attorney General of the Commonwealth of Kentucky, Movant,

v.

Roy CROFT, Individually, and Roy Croft, Member of the Board of Education of Crittenden County, Kentucky, Respondent.

June 28, 1968.

Consolidated quo warranto proceedings for ouster of certain members of county board of education, wherein motion for temporary injunction to prevent members from officially participating in appointment of school superintendent was filed. The Court of Appeals, Palmore, J., held that because members of school board might later be found to be ineligible did not warrant enjoining them from officially participating in appointment of school superintendent pending trial and judgment on merits in ouster proceedings.

Temporary relief denied.

West Headnotes

[1] Schools 345 ⚔ 48(4)

345 Schools

345II Public Schools

345II(C) Government, Officers, and District Meetings

345k48 County Boards and Officers

345k48(4) k. Removal or Suspension.

Most Cited Cases

Even if proceedings to oust members of county board of education proved successful, ousted members would have been de facto officers until judgment or judgments of ouster were entered and their participation in school board's dealings with third parties would not have been invalid; overruling in part *Craft v. Hall, Ky.*, 275 S.W.2d 410 (1955).

[2] Schools 345 ⚔ 53(2)

345 Schools

345II Public Schools

345II(C) Government, Officers, and District Meetings

345k51 District Boards

345k53 Appointment or Election, Qualification, and Tenure

345k53(2) k. Eligibility and Qualification. **Most Cited Cases**

School board member who violates statute prohibiting him from voting as to appointment or employment of any person related to him is ineligible for reelection. *KRS 160.180(4)*.

[3] Officers and Public Employees 283 ⚔ 39

283 Officers and Public Employees

283I Appointment, Qualification, and Tenure

283I(D) De Facto Officers or Employees

283k39 k. Unauthorized Office or Assumption of Position in General. **Most Cited Cases**
One who has never had title to office in first place can act as de facto officer.

[4] Officers and Public Employees 283 ⚔ 43

283 Officers and Public Employees

283I Appointment, Qualification, and Tenure

283I(D) De Facto Officers or Employees

283k43 k. Acting Although Ineligible or

Not Qualified. [Most Cited Cases](#)

One who becomes ineligible after he takes office acts as de facto officer until he is ousted.

[5] Schools 345 ↪48(4)

345 Schools

345II Public Schools

345II(C) Government, Officers, and District Meetings

345k48 County Boards and Officers

345k48(4) k. Removal or Suspension.

Most Cited Cases

Because members of school board might later be found to be ineligible did not warrant enjoining them from officially participating in appointment of school superintendent pending trial and judgment on merits in ouster proceedings. [CR 65.07](#); [KRS 61.090, 160.180\(2, 4\)](#); [Const. § 165](#).

[6] Officers and Public Employees 283 ↪82

283 Officers and Public Employees

283II Title to and Possession of Position

283k82 k. Injunction to Restrain Occupancy.

Most Cited Cases

In absence of extraordinary circumstances, officer should not be enjoined from performance of public's business pending outcome of ouster proceeding.

[7] Schools 345 ↪48(4)

345 Schools

345II Public Schools

345II(C) Government, Officers, and District Meetings

345k48 County Boards and Officers

345k48(4) k. Removal or Suspension.

Most Cited Cases

That school superintendent's contract was about to expire and new contract might or would be made was not an "extraordinary circumstance" such as would justify enjoining school board members against whom ouster proceedings had been initiated from participating in appointment of superintendent.

ent. [CR 65.07](#); [KRS 61.090, 160.180\(2, 4\)](#); [Const. § 165](#).

***648** William E. Scent, Reed, Scent & Reed, Paducah, for appellant (movant).

Robert Matthews, Greenebaum, Barnett, Wood & Doll Louisville, for appellee (respondent).

PALMORE, Judge.

These consolidated quo warranto proceedings for the ouster of certain members of the Crittenden County Board of Education are before us on a [CR 65.07](#) motion for a temporary injunction to prevent the respondent school board members from officially participating in the appointment of a school superintendent. This opinion is issued in connection with an order overruling the motion.

In considering whether temporary relief should be granted it is necessary to assess the practical and legal consequences of what the school board may or is likely to do if it is denied. Assuming it gives a contract to a new superintendent, and thereafter some of the members are ousted in this proceeding, what will be the result?

In the argument our attention was called to [Craft v. Hall, Ky., 275 S.W.2d 410 \(1955\)](#), in which it was held that the vote of a school board member who had vacated his office by accepting an incompatible office[FN1] was invalid and could not be counted, even though the judgment of ouster was entered after the vote in question had been cast. The reason for this result was that an office is automatically vacated by acceptance of an incompatible office. A similar provision is made by [KRS 160.180\(2\) and \(4\)](#), the statutory authority under which the instant proceedings are founded. Therefore, if Craft governs, and if the respondents eventually are ousted, interim actions of the board that depend on their vote will be invalid. And if that is so, injunctive relief is not necessary.

[FN1.Const. s 165; KRS 61.090.](#)

[1] We have concluded, however, that even if the ouster proceedings prove successful, the respondents will have been de facto officers until the judgment or judgments of ouster are entered, and that their participation in the school board's dealings with third parties will not have been invalid. To that extent [Craft v. Hall, Ky., 275 S.W.2d 410 \(1955\)](#), is overruled.

[2] A school board member who violates [KRS 160.180\(4\)](#) is ineligible for reelection. [Letcher v. Commonwealth ex rel. Matthews, Ky., 414 S.W.2d 402, 405 \(1967\)](#). Thus if Craft were followed, and a judgment of ouster under this section were given retroactive effect for all purposes back to the time the violation was committed, every contract made in the interim and which depended on his vote would be retroactively invalidated, or held void ab initio. That would include, for example, revenue bond issues. It is our opinion that this is the very result the principle of de facto officers was created to prevent.

'An officer de facto is to be distinguished from a mere usurper or one not having some color of title to the office, and to be one whose title is not good in point of law but who is in fact in the unobstructed possession of an office and is discharging those duties in full view of the public in such manner and under such circumstances as not to present the appearance of being an intruder or usurper.' [Schafffield v. Hebel, 301 Ky. 358, 192 S.W.2d 84, 86 \(1946\)](#).

In [Johnson v. Sanders, 131 Ky. 537, 115 S.W. 772 \(1909\)](#), a postmaster accepted appointment as a school trustee and acted in that capacity for 18 months. By virtue of [Const. s 237](#) he was ineligible to hold the office of a school trustee. He and another trustee employed a teacher, the third member of the board of trustees not joining. The employment was held valid. 'Numerous authorities * * * can be found which hold that while the act of an officer *649 de facto where it is for his own benefit is void, because he shall not take advantage of his own want of title which he must be cognizant of,

but where it is for the benefit of strangers or the public, who are presumed to be ignorant of such defect of title, it is good * * *

'Testing the acts of M.D.L. Greer, while assuming to perform the duties of a school trustee, by the doctrine announced by the authorities, supra, we must conclude that he was a de facto trustee at the time of the employment of appellant to teach the school in question, and as the written contract evidencing her employment was in due form and agreed to and signed by M.D.L. Greer and U. M. Johnson, the first a de facto and the second a de jure trustee and the two constituted a majority of the board of trustees of the school district, it was binding upon the board of trustees and the district as well.' [115 S.W. at pp. 773, 774](#).

See also [Willis v. Skinner, 211 Ky. 340, 277 S.W. 490 \(1925\)](#), another school board case, in which the court said, 'Those who are in possession of public offices under color of title are de facto officers, and their acts are valid and effectual, so far as they affect the public and third persons * * *

'In this case it is clearly shown that the members of the school board which levied the tax in question were in possession of their offices under color of title and therefore they were at least de facto officers.' [277 S.W. at page 491](#).

[3][4] Since it is clearly settled that one who never has had title to an office in the first place can act as a de facto officer, it is bound to be equally evident that one who becomes ineligible after he takes the office acts as a de facto officer until he is ousted.

[5][6][7] It does not follow, however, that because members later found to be ineligible may participate in the appointment of a superintendent they should be enjoined pending a trial and judgment on the merits. This device of ousting or attempting to unseat school board members on the eve of the election of a new or re-election of the incumbent superintendent has become an annual game which ought to be discontinued. We think that in the ab-

sence of extraordinary circumstances an officer should not be enjoined from the performance of the public's business pending the outcome of an ouster proceeding. That the superintendent's contract is about to expire and a new contract may or will be made is not such an extraordinary circumstance.

Temporary relief is denied.

WILIAMS, C.J., and HILL, MILLIKEN, OS-
BORNE and STEINFELD, JJ., concur.
Ky., 1968.
Com. ex rel. Breckinridge v. Winstead
430 S.W.2d 647

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